F. M. S. REPORTS.

ABDUL RAHMAN vs. ESAH.

[Appellate Civil Jurisdiction (Horne, J.) October 22, 1940]

Distribution Enactment (Cap. 71), section 2—Probate and Administration Enactment (Cap. 8), section 188—Evidence Enactment (Cap. 10), sections 13 and 42—Intestacy—Muhammadan law—Local custom, proof of—Widow's share.

The Collector assumed that there was a custom under which the widow of a Malay agriculturist was entitled either to (a) one-half share of her deceased husband's property or (b) this half plus a widow's share under Muhammadan law out of the other half.

Held, that section 2 of the Distribution Enactment and section 188 of the Probate and Administration Enactment imply that the rules for distribution of a Muslim's estate are the rules of Muhammadan law as varied by local custom.

The case of **Haji Ramah v. Alpha**(1) is not an authority for the proposition that the widow is entitled to half share by succession: it is an authority for the proposition that in Selangor a widow who has worked on her husband's land has a claim for monetary compensation which may be proved against his estate.

The existence of local custom may be proved by authoritative decision or by evidence (Evidence Enactment, sections 42 and 13).

There being no evidence as to tribal organisation or as to the alleged custom in Pahang and no authority as to such organisation or custom having been cited, the judgment must be set aside and a re-hearing ordered.

Case referred to:—

(1) *Haji Ramah v. Alpha,* (1924) 4 F.M.S.L.R. 179.

Tengku Ismail for appellant.

Respondent in person.

Horne, J.—This appeal was brought from the order of J. F. F. Gregg, Esq.; made in Kuala Lipis Distribution Suit No. 35 of 1937. The grounds of judgment are very short but appear to me to assume that there is a custom under which the widow of a Malay agriculturist is entitled either to (a) one-half share of her deceased husband's property or (b) this half plus a widow's share under Muhammadan law out of the other half.

The deceased was apparently a Muslim and died intestate, and section 2 of Chapter 71 (Distribution Enactment) and section 188 of Chapter 8 (Probate and Administration Enactment) imply that the rules for the distribution of such an estate are the rules of Muhammadan law as varied by local custom.

So far as I am aware there is no Supreme Court judgment or any other reported judgment as to any local variations of the Muhammadan law rules for distribution in Pahang. The case of *Haji Ramah binti Mat Drus v. Alpha binti Osman & Ors.*(1), was cited during the hearing.

This case is not an authority for the proposition that the widow is entitled to half share by succession. It is an authority for the proposition that in Selangor a widow who has worked on land registered in the name of her husband has a claim for monetary compensation, which, if not satisfied before his death, may be proved against his estate.

In that case, however, although the widow was successful in her claim, succession clearly went according to Muhammadan law. In the present case the claim seems to be based upon an alleged custom as to succession. The suggested custom appears to be an imitation of one of the property rules current among the customary tribes in Negri Sembilan but there is no evidence as to tribal organization in Pahang.

An authoritative decision as to such a custom would be relevant to prove its existence: section 42 Evidence Enactment (Cap. 10). See also *Woodroffe and Ameer Ali,* Law of Evidence, 9 Edition 424. But there appears to be no such decision. Moreover, no evidence was taken before the Collector as to the existence of such custom: section 13 of Chapter 10 and *Woodroffe and Ameer Ali,* page 195 *et seq.*

It was stated during the hearing of this appeal that some Collectors hold that such custom exists; others that it does not exist. If so, it would appear that its existence is doubtful and that litigants who seek to rely upon the alleged custom should prove its existence.

There is no such evidence on the record nor does the Collector refer to any authority, and, as the judgment appears to be based on alleged custom, it is, for the reasons above, set aside and the application for distribution is ordered to be re-heard. At such re-hearing it will be open to the widow to base her claim upon and prove the existence of the custom.

No order as to costs of the appeal.

Appeal allowed. Judgment set aside and re-hearing ordered.

WONG NGIAN THIN vs. P. P.

[Appellate Criminal Jurisdiction (Cussen, J.), September 4, 1940]

The Customs Enactment (No. 5 of 1936), sections 51, 113, 114 and 124—False account of goods imported

—Liability of importer for acts of his servants or agents—Calculation of fine, whether upon the whole duty or only upon the amount of duty evaded.

The appellant was charged and convicted under section 114 (h) of the Customs Enactment, which is as follows:

> "Whoever....(h) is in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any Customs duty
>
> shall....be liable on conviction to a fine not less than six times the amount of the duty or five thousand dollars whichever is the less, and which may extend to twenty times the amount of the duty or five thousand dollars whichever is the greater...."

The appellant resided in Singapore where he carried on business in partnership as a dealer in goods from Shanghai and Hong Kong. He opened a shop of his own in Kuala Lumpur in 1938 under the style of Khim Yick & Co. He did not manage or conduct the business of this shop himself, but left it entirely to a manager, Chong Lip Sam, to whom he granted a power of attorney containing wide powers.

Khim Yick & Co. imported goods from Shanghai, and in April, 1940, goods arrived therefrom per s.s. "Santhia". The shipping documents and bill of exchange, payable 45 days after acceptance, were presented to and accepted on behalf of Khim Yick & Co., who proceeded to clear the goods through the Customs in the following manner:

1. In August 1939, Khim Yick & Co. had appointed Loon On Forwarding Agents Co. to transact their business with the Customs Department. This document was signed in Chinese "Chong Thian Yew" without any description of what position that person held in Khim Yick & Co. and bore the "Chop" of Khim Yick & Co. affixed by an ordinary rubber stamp.

2. A special invoice of the goods, supplied by the exporters from Shanghai, was presented by Khim Yick & Co. to the forwarding agents who prepared an application for the removal of the goods in accordance with that invoice. It was a false invoice, understating the quantities and prices of the goods concerned, and clearly prepared with a view to defrauding the Customs.

3. On the faith of the forwarding agents' application, duty was assessed and paid, and the goods were cleared. The amount of duty paid was $342.83: the amount, as subsequently ascertained, which should have been paid was $757.78.

It was accepted that the forwarding agents were innocent participants in the fraud, and the Magistrate found that the appellant was not concerned therein except for the facts that he was the proprietor of Khim Yick & Co. and that, as such, he received 80 per cent. of the amount by which the Customs had been defrauded.

The Magistrate convicted the appellant on the ground that he was liable for the criminal act of his agents, applying the principle set out in **Allen v. Whitehead**(1) and also section 124 (iv) of the Customs Enactment. He inflicted the approximately minimum sentence of a fine of $4,225, basing his calculation upon six times the total duty on all the goods, and deducting from this total the amount of duty actually paid. The appellant appealed against both conviction and sentence.

Held, that the question of whether section 114 (i) (h) of the Customs Enactment is an exception to the general rule of "mens rea" in criminal cases, in so far as a principal is to be held criminally responsible for the offence actually committed by his agent, irrespective of any guilty knowledge in the principal, is concluded by section 124 of the Enactment. By that section the legislature has expressly stated when and how in the case of offences under the Customs Enactment this exception to the general principle of criminal law is to apply. An extension of criminal liability such as this must be strictly confined to its express enactment. The principle **"expressio unius exclusio alterius"** applies.

The only act of an authorised agent to which section 124 (iv) could attach was the act of the forwarding agents in making the false declaration and presenting it and the false invoice to the Customs officer. That act was not an offence under section 114 (i) (h) because there was no guilty knowledge in the forwarding agents. The conviction under that section cannot therefore stand.

The offence constituted by the provisions of section 113 is an absolute one, irrespective of any knowledge on the part of the offender, and was committed by the forwarding agents. They were appointed on behalf of Khim Yick & Co. in the ordinary course of business, the appointment was acted upon by all parties and its validity was not questioned at the trial. The words "authorised by him" in section 124 (iv) do not require that the authorisation must be personal, and the forwarding agents were agents within the meaning of that section. A conviction under section 113 (i) was therefore substituted.

Cases referred to:—

(1) *Allen v. Whitehead* (1930) 1 K.B. 211.
(2) *Frailey v. Charlton* (1920) 1 K.B. 147.
(3) *R. v. Holbrook* (1877) 3 Q.B.D. 60.
(4) *R. v. Holbrook* (1878) 4 Q. B.D. 42.
(5) *Massey v. Morriss* (1894) 2 Q.B. 412.
(6) *Hardcastle v. Bielby* (1892) 1 Q.B. 709.
(7) *Arthanarisami Chettiar v. P.P.* (1940) M.L.J. 67; (1939) F.M.S.L.R. 23.
(8) *R. v. Deane* 7 Cr. App. Rep. 69.
(9) *P.P. v. Rudguard* (1939) M.L.J. 56; (1938) F.M.S.L.R. 215.
(10) *Somerset v. Hart* 1884 12 Q.B.D. 360.
(11) *R. v. Stephens* (1866) 1 Q.B. Cases 702.
(12) *Dyer v. Munday* (1895) 1 Q.B. 742.
(13) *Coppen v. Moore* (1898) 2 Q.B. 300.
(14) *Mousell Bros. v. L. & N.W.R.* (1917) 2 K.B. 836.
(15) *Ang Lock Toon & Anor. v. Public Prosecutor* 1 F.M.S.L.R. 199.

MAGISTRATE'S APPEAL.

B. J. P. Joaquim and *H. Y. Teh* for appellant.

J. F. Draper, Deputy Public Prosecutor, for respondent.

B. J. P. Joaquim.—The section is a penal section and therefore if there is any ambiguity, it must be

construed favourably to the accused. [*31 Halsbury (Hailsham) p. 536, para. 704.*]

The words "concerned in any fraudulent evasion" do not mean "financially interested" therein. Para. (h) is complementary to the preceding paragraphs of the section [*Frailey v. Charlton*[2]]. The word "concerned" imports taking part in, assisting in, or abetting. The appellant was not "concerned" in the evasion.

If he was "concerned" therein, he was not "knowingly" concerned therein. On general principle a master is not criminally liable for the unauthorised acts of his servants, and the entrusting of a business to a manager is not an authorisation to the manager to commit a criminal offence in the conduct thereof:

9 Halsbury (Hailsham) p. 12, para 4. *R. v. Holbrook*[3]. *R. v. Holbrook*[4]. *Massey v. Morriss*[5]. *Hardcastle v. Bielby*[6].

The language of the section as a whole must be considered. Being "concerned" is an offence under paras. (a), (b), (f) and (h), while in the last two paragraphs the word "knowingly" is included. Paragraphs (f) and (h) are thus distinguished from paragraphs (a) and (b) and some effect must be given to this distinction.

The types of penal statutes are discussed in *22 Halsbury (Hailsham) page 232, para. 412.* This case comes under the third type; the prosecution must prove that the appellant knew, either actually or constructively, of the servant's act or that he connived at its commission.

The principle of *Allen v. Whitehead*[1] does not apply to this section. The section does not prohibit an act or enforce a duty in such words as to make the prohibition or duty absolute. It does not aim at a class of persons. It is aimed at the world at large. It is passed in language similar to the majority of sections in the Penal Code. It merely creates an offence and imposes a penalty on whoever knowingly commits the offence.

The Customs Enactment, by section 124, provides for the criminal liability of a principal for the acts of his agent. This provision having been made in a section of the Enactment itself, it will not be extended beyond that section, unless the intention to extend is clear from the language of the section under consideration. *"Expressio unius est alterius exclusio."*

In order that the appellant shall be liable by reason of section 124 (iv), he must be brought within the four walls of that sub-section. The following essentials must be proved:—

1. That the offence charged against the principal has been committed by an agent.
2. That the agent was authorised by the principal under the section.
3. That the offence was committed by the agent in the course of his employment as authorised agent, i.e., in a transaction with the Customs Department.

The provisions of the sub-section must be strictly complied with:—

Arthanarisami Chettiar v. P.P. (7).

The only person for whose acts the appellant could be responsible are:—

1. his own employees in Khim Yick & Co.
2. the forwarding agents or their representatives.

As regards his own employees there is no evidence that they ever came into contact with the Customs Department, and, if they did so, that any authorisation to them had been approved by the Senior Officer of Customs as required by sub-section (i) of section 124.

As regards the forwarding agents, it was admitted that they were innocent of the offence. Furthermore it had not been proved that they were the agents of the appellant, as their authority was purportedly signed by "Chong Thian Yew" and there was no evidence as to who "Chong Thian Yew" was. If it is desired to make a principal criminally liable for his agents' acts the agency must be strictly proved in every step.

As regards the fine, the Magistrate clearly intended to impose the minimum sentence. The language of the section implies that the fine is in respect of the duty evaded, not the whole duty on all the goods. The Magistrate should first have deducted the duty paid from the total duty, before multiplying by six. On this basis the minimum fine is $2,489.70. At the worst, the language is ambiguous and a lenient construction must be given. [*31 Halsbury (Hailsham) p. 536, para. 704.*]

J. F. Draper.—The authority to the forwarding agents was admittedly not strictly proved: but it has been admitted in evidence, and the Magistrate was entitled to presume that it had been made in the ordinary course of business. It is not open to the appellant now to challenge this document—*R. v. Deane*[8].

The word "concerned" has a very wide meaning, and must be construed in its ordinary and natural sense.

Maxwell's Legal Interpretation (8th Edn.) pages 215, 230, 240 and 248.

Stroud's Judicial Dictionary (2nd Edn.) page 361.

P.P. v. Rudguard[9].

If a person wilfully closes his eyes or refrains from making enquiries, actual knowledge must be imputed.

Somerset v. Hart[10]. *R. v. Holbrook*[3]. *R. v. Stephens*[11]. *Dyer v. Munday*[12]. *Coppen v. Moore*[13].

The appellant is liable on the principles laid down in *Mousell Bros. v. L. & N.W.R.*[14] and *Allen v. Whitehead*[1]. The Customs Enactment is directed at the class of persons passing goods through the Customs Department. The appellant comes within that class. By section 114 (ii), subject to rebuttal the goods were uncustomed goods to his knowledge.

If the appellant is not liable under section 114, all facts are before the Court to enable the Court to alter the charge to an offence under section 113 (i) (b) and to convict under that section. There was clearly a false declaration put forward by the appellant's agents, the forwarding agents. The fact that they were innocent, makes no difference under this section.

Either the forwarding agents were the agents of the appellant in which case he is liable: or they were not, in which case he committed an offence under section 51 of the Customs Enactment. This last section imposes an absolute obligation—*Ang Lock Toon & Anor. v. Public Prosecutor*[15].

B. J. P. Joaquim in reply.—In the case of *R. v. Deane*[8] the accused was not permitted to raise a new defence based upon new facts. But here the appellant takes the point that the prosecution has failed to prove essential facts, namely who Chong Thian Yew was and his authority to sign for the appellant or on behalf of Khim Yick & Co.

Neglect to look after his business does not make the owner criminally liable. In the cases cited by the Deputy Public Prosecutor either there was a statutory obligation to take care, or it was a civil obligation.

The appellant satisfied the Magistrate that he had no knowledge at all about the matter and therefore section 114 (ii) no longer applies to him.

As regards alteration of the charge to a charge under section 113, the persons making and presenting the false application to the Customs for clearing the goods were the forwarding agents. Section 124 (iv) must be strictly construed. The words "authorised by him" mean authorised by the principal who is to be held liable, and not by his agent or substitute. It might be otherwise in a civil matter, but this is a penal section, and the words "authorised by him" mean "authorised by him personally". The section makes provision for the liability of the principal, but it is on terms that the requirements of the section shall be strictly fulfilled.

In any event, the prosecution has failed to prove that the forwarding agents were authorised by any delegate of the appellant, as there is no evidence at all as to who "Chong Thian Yew" is or as to his authority to sign on behalf of the appellant or Khim Yick & Co.

As regards the alternative alteration of the charge to a charge under section 51, it may well be that the appellant acted under this section through an agent: nevertheless as the Customs Department did not insist on the formalities of section 124, the appellant is not liable under that section for the acts of the agent.

Cussen, J.—The appellant was convicted in the Court of the Magistrate, Kuala Lumpur, under section 114 (i) (h) of the Customs Enactment of the offence of being knowingly concerned in a fraudulent evasion of Customs duty and fined $4,225, or in default six months' rigorous imprisonment.

The fraudulent evasion of duty occurred in connection with the importation through the Customs Station at Port Swettenham of certain goods from Shanghai.

A false declaration of value of the goods was made in the Application for Permission to import and this was supported by an Invoice from the Consignors. This invoice was false, the true invoices being subsequently found in the possession of the importer.

The importer was a Kuala Lumpur business firm styled "Khim Yick & Co.". The appellant, who lives in Singapore and carries on business there, is the sole proprietor of the Kuala Lumpur firm "Khim Yick & Co.". The conduct of this business of the Kuala Lumpur firm was entrusted absolutely by the appellant to the local Manager, one Chong Lip Sam.

The offence charged was committed on 19th February, 1940.

A firm named the "Loon On Forwarding Agents Co." at Port Swettenham acted as agent for "Khim Yick & Co." in the transaction of the business in connection with the import of goods at the Port Swettenham Customs Station, and as such made the False Declaration in question and presented with it the false invoice.

In so doing "Loon On" acted innocently and had no knowledge that the invoice, on which the declaration was based, was false.

The actual guilty knowledge was with the Kuala Lumpur firm who were in possession of both the true and the false invoices, having received the true invoice with the Bill of Exchange from the Hongkong & Shanghai Bank who had received them from the consignor. "Khim Yick & Co." handed over the false invoice to the Port Swettenham agents "Loon On".

It is not claimed, and there is certainly no proof that the appellant himself was privy to the fraudulent evasion. It must be held, and was so held by the learned Magistrate, that he had no actual guilty knowledge.

The conviction under section 114 (i) (h) rests upon the decision of the Magistrate that offences under the Customs Enactment—at any rate the offence in question—was an exception to the general rule of "mens rea" in criminal cases, in so far as a Principal is to be held criminally responsible for the offence actually committed by his agent irrespective of any guilty knowledge in the Principal.

Many English cases were cited in illustration of the application of this exceptional rule, but it is not, in the view I take, necessary for me to set out any examination of them. For, in my view, this question is concluded by section 124 of the Enactment.

The relevant parts of section of 124 read as follows:—

124. (i) No person authorised to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or aircraft or the import or export of goods or baggage shall so act in any Custom-house unless such authorization is approved by the Senior Customs Officer.

Such officer may require any person so authorised to give a bond with sufficient security in any sum not exceeding five thousand dollars that he will duly observe the Customs laws, rules and regulations.

Such officer may in case of misbehaviour of the person so authorized suspend or withdraw such approval.

(ii) An appeal to the Comptroller shall lie from the decision of the Senior Customs Officer in respect of the following matters, viz.:

(a) refusal to approve an agent;

(b) amount of security required from an agent;

(c) suspension or withdrawal of approval of an agent.

Every appeal under this section shall be made within one month from the date of the decision of the Senior Customs Officer.

(iii) The clerk, servant or agent of any person or mercantile firm may transact business generally at any Customs Office on behalf of such person or firm; provided that the Senior Customs Officer may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Senior Customs Officer as empowered to transact such business and deposits with the Senior Customs Officer an authority in writing signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

(iv) Where any person would be liable under this Enactment to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent authorized by him under this section if such act, omission, neglect or default is committed in the course of the employment as authorized clerk, agent or servant.

Here, in my opinion, the legislature has expressly stated when and how in the case of offences under the Customs Enactment this exception to the general principle of criminal law is to apply. An extension of criminal liability such as this must be strictly confined to its express enactment. The principle of *"expressio unius exclusio alterius"* applies.

Applying then those provisions of section 124 to the present case, it is evident that the only act of an authorized agent to which section 124 (iv) can attach is the act of "Loon On" in making the false declaration and presenting it and the False Invoice to the Customs Officer. It can only be for such act by "Loon On" that the Principal "Khim Yick & Co., who is the appellant, can be made liable as if for an act done by himself.

But what "Loon On" did is not an offence under section 114 (i) (h), as the necessary element of guilty knowledge is absent.

In my opinion then neither "Loon On" nor the appellant [by force of section 124 (iv)] committed the offence under section 114 (i) (h), and therefore

the conviction by the Magistrate under that section cannot stand.

But, in the course of the trial, a second charge was added under section 113 (i) (b) and section 124 (iv) in respect of the incorrect declaration in the Application for Permit to import required by section 51 of the Enactment.

Now the offence constituted by these provisions of the Enactment is an absolute one, and is committed when an untrue or incorrect declaration is made irrespective of any knowledge of such falsity or incorrectness.

The language of the sections indicate this, and it was so held in regard to section 20 of Enactment 20 of 1907 (The Customs Regulations, 1907) in the case of *Ang Lock Toon and another v. Public Prosecutor*[15].

The language of that section is the same as that in the sections 51 and 113 of the present law.

On this second charge the appellant at the hearing claimed trial. The learned Magistrate, at the conclusion of the case, convicted under section 114 (i) (h) but did not give any judgment on the second charge.

I have now, in this appeal, at the request of the respondent, to which the appellant's counsel agrees, to deal with this second charge.

The only defence to the second charge adduced now by counsel for the appellant is that "Loon On" the Forwarding Agent who made the incorrect declaration is not "an agent authorized by him under this section" within the meaning of section 124 (iv).

It is argued—

(1) that "Loon On" were not "authorized" by "Khim Yick and Co."; and

(2) that the words "authorized by **him**" mean by him personally and that an authorization by a Manager or other person in charge of the business or some activity of the business of "Khim Yick & Co." is not an authorization within the meaning of the section.

I do not agree with this latter argument that the authorization must be personal.

It remains to consider the validity of the authorization given by "Khim Yick & Co." to "Loon On". That is contained in the document Exhibit P13. That document is as follows:—

C. & E.P.S. 301/39 (16).
(Stamped F.M.S. Customs & Excise, Port Swettenham, dated 31st August, 1939).

Chop Khim Yick,
19, Pudu Street,
Kuala Lumpur,
17th August, 1939.

To
The Senior Officer of Customs
(Warehouse),
Port Swettenham.

We Chop Khim Yick of No. 19, Pudu Street, Kuala Lumpur, do hereby appoint Loon On Forwarding Agents Co., of Port Swettenham to be our accredited agent for the transaction of business relating to the import and export of goods, and we do hereby agree to hold ourselves responsible for any inaccurate statement which may be made in any declaration in respect of goods imported or exported by us.

Sd: Chong Thian Yew
(In Chinese)
(Chop of) "Khim Yick & Co."
Kuala Lumpur.

Witness to above Signature.
Sd: P. W. Au-Yong,
Advocate and Solicitor,
Kuala Lumpur.

Sd: ?
Loon On Forwarding Agents Co.,
Port Swettenham.
Signature of accredited agent.

Registered No. 787 of 1939.
Duplicate deposited in the Supreme Court, Kuala Lumpur, on 18th August, 1939.
Sd: Mohamed Taib,
Asst. Registrar, Supreme Court,
Kuala Lumpur.

(Seal of Supreme Court, F.M.S.)

Sd: Moey Sze Wing,
Clerk.

Now, it is to be noted that it is addressed to the "Senior Officer of Customs", it is signed before an Advocate and Solicitor, it is registered in the Supreme Court, and it is also signed by the Forwarding Agent "Loon On".

The signature which is witnessed consists of the "chop" of "Khim Yick & Co." and a signature in Chinese which, as translated, is "Chong Thian Yew".

It is dated the "17th August, 1939" and bears the Customs, Port Swettenham stamp of 31st August 1939.

The Registered Power of Attorney to Chong Lip Sam was given in November, 1939, so it is not relevant to the consideration of the Authorization P13; except that it is evident that whatever position Chong Lip Sam may have held before November, 1939, it was not constituted or defined by a Power of Attorney.

Now, the appointment of an agent at a Customs Station is an ordinary and necessary act in the course of the conduct of a business such as that of "Khim

Yick & Co.", and so is necessarily within the scope of the authority residing in the persons who conduct that business for an absentee principal.

Whether the person who signed P13 on the Chop of "Khim Yick & Co.", i.e., Chong Thian Yew, is the same person as the witness "Chong Thian Yew" who described himself as "Cashier" of the firm is not recorded but he probably is.

It is to be noted that the acceptance by the firm of the Bill of Exchange (Exhibit P1) on 30th January, 1940, is also made by the same chop and signature.

It is evident that the "authority" to "Loon On" has been acted upon both by "Loon On" and by the firm "Khim Yick & Co." and so ratified by the conduct of the Manager of the firm. Its validity was not questioned when evidence was given at the trial by witnesses who referred to it, including the appellant.

I conclude therefore that "Loon On" was an agent of "Khim Yick & Co." within the meaning of section 124 of the Enactment, and therefore the agent of this appellant who is "Khim Yick & Co."

I therefore set aside the conviction and sentence under section 114 (i) (h) of the Enactment and substitute a conviction under section 113 (i).

I convict the appellant under section 113 (i) and sentence him to a fine of $1,000 in default two months' rigorous imprisonment.

A point arose in connection with the conviction under section 114 (i) (h) as regards the sentence which it will be useful for me to pronounce upon.

The section provides for the fine being calculated as a multiple of the duty, i.e., from six to twenty times.

In so calculating the fine, the Magistrate took the amount of the total duty. That I think is wrong—the words "amount of duty" mean the "amount of the duty evaded", i.e., the difference between the duty calculated on the true values, etc., and the duty actually paid.

Conviction confirmed but varied. Sentence reduced.

KANNAPPA CHETTIAR vs. KARUPPAN CHETTIAR AND OTHERS.

[Original Civil Jurisdiction (Cussen, J.), October 15, 1940]

Civil Procedure Code (Cap. 7), section 35—Recognized agent—Partnership—Suit in name of partner for partnership debt—Verification of plaint by attorney of partner—Attorney also manager of partnership business.

This action was brought in the personal name of a partner for money due to the partnership. The plaint was signed by the attorney of the plaintiff under a power of attorney which did not purport to confer powers in respect of the partnership business. In fact, the attorney was in charge of and managed the partnership business.

Held, (1) that the plaint should be amended by substituting the name of the partnership for that of the present plaintiff:

(2) that although the signature of the plaint by the attorney of the plaintiff in that capacity might be bad, it was good in his capacity of agent and manager of the firm under section 35 (b) of the Civil Procedure Code.

P. R. N. N. Firm v. Soona Navana Firm (judgment infra) followed.

Cases referred to:—

(1) *Court v. Berlin* (1897) 2 Q.B. 399.

(2) *RM. K. R. M. vs. V. RM. V.* L. (1926) A.C. 761.

(3) *P. R. N. N. Firm vs. Soona Navana Firm* Judgment given in footnote.

R. Ramani for plaintiff.

C. Mills for defendants.

Mills.—Plaintiff described as P. R. N. N. Kannappa Chettiar of Kuala Lumpur—The plaint is signed and verified by Vellasamy Pillai—The money is said to be due to the firm of P. R. N. N.

For the purpose of this part of my argument, the partners are (1) Kannappa Chettiar, (2) Valliammai Achi and (3) Sithamparam Chettiar—The old rule was that all partners should be plaintiffs because the cause of action was a joint cause of action—Section 404 of the Civil Procedure Code remedied this inconvenience by enabling them to sue in the name of the firm—The position therefore is either all the partners can sue in their joint names or the suit is brought in the name of the firm. In this case neither has been done—I say in fact there is no such person as P. R. N. N. Kannappa Chettiar. The suit ought to be dismissed on that ground alone.

Further Vellasamy Pillai signs under a personal power of attorney from Kannappa Chettiar—It is not a joint power from all the partners nor a power of attorney from Kanappa Chettiar as a partner in the firm—As such he is not competent to verify this plaint